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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1077

ANDREW GALICH, individually, and on behalf of the SACRED HEART SAVE OUR SHRINE COMMITTEE, INC.,

Petitioner,

vs.

THE CATHOLIC BISHOP OF CHICAGO, a corporation sole,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS

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PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioner, Andrew Galich, individually and on behalf of the Sacred Heart Save Our Shrine Committee, Inc., prays that a Writ of Certiorari issue to review the judgment of the Appellate Court of Illinois, First District, entered on November 29, 1979.

OPINIONS BELOW

The opinion of the Appellate Court of Illinois is attached hereto as Appendix A.

The Order of the Supreme Court of Illinois denying leave to appeal is attached hereto as Appendix B.

JURISDICTIONAL STATEMENT

The judgment of the Appellate Court of Illinois was entered on August 17, 1979.

Leave to appeal was denied by the Supreme Court of Illinois on November 29, 1979.

Jurisdiction of this Court is invoked under 28 U.S.C., § 1257(3).

QUESTIONS PRESENTED

1. Where there are no doctrinal differences is it a denial of equal protection and due process under the Fourteenth Amendment to deny members of a hierarchical church property rights while members of congregational churches are afforded property rights and due process of law and whether in so doing individuals are punished for their religious beliefs?
2. Whether Respondent can use the First Amendment as a sword to deny Petitioners property rights even though there are no doctrinal differences?
3. Whether neutral principles of law should be applied in this controversy?
4. Whether the courts have the power to review an arbitrary decision to demolish a church?
5. Whether Respondent's holding property as a corpotion sole is a violation of the First Amendment Establishment Clause and the Equal Protection and Due Process Clauses of the Fourteenth Amendment?
6. Whether the Respondent's unique status as corporation sole and the Illinois court's grant of immunity from any trust, express or implied or statutory violates the Establishment Clause of the First Amendment in that other religions in Illinois are bound by the Religious Corporation Act to hold property in trust for their members?

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional provisions involved in this case are:

1. The First Amendment to the United States Constitution, which provides in pertinent part:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . "

2. The Fourteenth Amendment to the United States Constitution which provides in pertinent part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws . . . "

3. Article VI of the United States Constitution, which provides in pertinent part:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding . . . "

SUMMARY OF ARGUMENT

Cardinal Cody promised to replace a retiring pastor for the Sacred Heart Shrine.

Thereafter, he ordered that the Sacred Heart Shrine be razed. One of his stated reasons was the "hazardous" condition of the building. A second reason was shortage of priests.

Skilled tradesmen volunteered to refurbish the building and the congregation offered to defray all expenses involved. Volunteer priests offered to continue to say Mass there.

But Cardinal Cody refused to discuss the matter.

The congregation turned to the courts.

The trial court dismissed the action, and the Appellate Court affirmed, holding that Cardinal Cody's decision is "ecclesiastical in nature."

First, holding that a decision to demolish a building is "ecclesiastical in nature" is like taking a bucket of whitewash and writing the letters C-A-T on the side of a horse and then holding that the horse is a cat.

As regards the shortage of priests, the congregation can secure the services of innumerable volunteer priests to say Mass at any time.

Unless this Court intervenes, Cardinal Cody can order that every Catholic church in Chicago be razed and the sites be turned into parking lots, and neither the parishioners nor the courts could stop such wholesale destruction.

STATEMENT OF THE CASE

History Of Sacred Heart Shrine

The site of Sacred Heart Shrine was originally a resting stop on the Vincennes Trail between Chicago and Indiana. In 1905 a parcel of land was deeded to the Catholic Bishop of Chicago for a consideration of $1.00. Shortly afterwards, a frame church building was constructed by the Archbishop of Chicago. This became known as Sacred Heart Shrine. The worshippers, perhaps because of the Chicago fire, did not think the frame structure appropriate. The French-speaking congregation built a brick structure around and about the frame structure. The brick building was the last surviving French Mission in the State of Illinois.

The first pastor assigned to Sacred Heart Shrine studied medicine in his native France before becoming a priest. Perhaps this accounts for the apparent healings that took place. At any rate, the Shrine became a welcome refuge not only for French-Americans, but many others found it to be a holy place.

Over the years, the congregation of Sacred Heart Shrine that came the first day with a laying hen to greet their new priest, became financially able to beautify the interior of the little church. They imported oil paintings and glorified the windows with exquisite stained-glass. Christenings, weddings, confirmations and funerals took place from one generation to the next in the little country church. Gradually the city grew up around it and named the street in front of the Shrine appropriately, "Church" Street. Many of the first French settlers moved to other areas and Irish, Germans, Italians,

Mexicans, Polish and Negroes took their place. The little Shrine remained one of the few churches with standing room only at the Sunday Masses. Attendance at other area churches declined.[1] Perhaps this is what motivated the pastor of a neighboring church to state in the parish bulletin that Sacred Heart was "a pebble in the shoe".

Landmark Application

On July 22, 1978, an application was made by a Sacred Heart member to the Illinois Historical Landmark Commission to have the Shrine officially designated as an Illinois landmark.[2] Also, in the summer of

[1] Respondent in this cause lists the number of Roman Catholics in the Archdiocese of Chicago as numbering 2,466,294; the exact same number listed by Respondent in the Amicus Brief filed in the United States Supreme Court in 1975, in *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Dionisije Milivojevich* (No. 74-292).

[2] On June 15, 1979, following a hearing of the Illinois Historic Sites Advisory Council, Sacred Heart Shrine was recommended as an Illinois Landmark to the National Register of Historic Places. Respondent filed an objection to the designation and the designation was denied. The ruling is being appealed currently by the Illinois Historic Sites Advisory Council. Upon motion of the Honorable Michael Sheahan, Chicago City Councilman representing the area encompassing Sacred Heart, the Commission on Chicago Historic and Architectural Landmarks is currently considering city landmark designation. Respondent has also filed objections to this Commission. Despite the landmark proceedings now taking place, on December 21, 1979 Respondent filed objections to Petitioner's stay of the mandate to preserve the res from demolition. These objections were overruled by Supreme Court Justice Kluczynski and the Shrine is to be preserved during the pendency of this cause before the United States Supreme Court. (In correspondence to the State and City Landmark Commissions, Respondent states that the "Archdiocese of Chicago" is the owner of record, not the Catholic Archbishop, as corporation sole. Original copies available at the Register of Historic Places, Department of the

(Footnote continued on following page)

1978, the Respondent sent three priests, including the urban vicar, to Sacred Heart Shrine to interview the people as to what type of new pastor they would prefer. After the interview, the retiring pastor informed the congregation that the Respondent promised the appointment of a new pastor upon his retirement.

The Shrine had a multitude of worshippers who gave money in envelopes each Sunday. These envelopes were provided by the Respondent and despite their contributions and the request of the pastor, Respondent failed to make necessary repairs to the building.

Closing Of Shrine

Three priests said Mass at the Shrine on Saturday evenings and Sunday mornings to packed congregations. When the pastor retired, the two other priests continued willingly to conduct services at Sacred Heart Shrine. Without notice to the two priests or the congregation of Sacred Heart Shrine, on January 21, 1979, the "administor" appointed by Respondent stated that the Shrine was closing permanently that day. This was contrary to what the people had been led to believe and contrary to the recommendations of the Respondent's urban vicar and consultor for the Southwest side of Chicago, Rev. Howard Tuite. No notice of the alleged secret hearing of the consultors was ever given Petitioners nor were they given the time or place of said hearing or any opportunity to be heard.

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[2] *continued*
Interior, 400 - 6th Street, N.W., Washington, D.C., Illinois Historic Sites Advisory Council, 405 E. Washington, Springfield, Illinois and Commission on Chicago Historical and Architectural Landmarks, 320 N. Clark Street, Room 200, Chicago, Illinois; copies available at office of counsel for Petitioners.)

Respondent, through his appointed administor, announced to the people that the Shrine was closing because of a shortage of priests and the "hazardous" condition of the building.

The two priests, Father Gallagher and Father Kret, both were willing to continue to say Mass at Sacred Heart Shrine and the people secured an estimate from a contractor as to the cost of repairing the church. The cost was less than the $30,000.00 held in the chancery account, which had already been contributed from Sacred Heart members. Plumbers, plasterers, roofers and painters all volunteered their services and the people of Sacred Heart indicated their willingness to raise any further amount of money needed.

Respondent Fails To Answer Pleas

The Respondent refused to talk to the members of Sacred Heart Shrine. The only official response was a letter from the Vicar General, Monsignor Bracken, denying the existence of any congregation of Sacred Heart.

Respondent did not inform the congregation of Sacred Heart Shrine that he had secured a demolition permit. Respondent instead announced the "merger" of Sacred Heart Shrine with other "nearby parishes".

Respondent Attempts To Demolish

When members of Sacred Heart were unsuccessful in their attempts to communicate with Respondent, and when they learned that Respondent had secured a permit to demolish Sacred Heart Shrine, they petitioned the Circuit Court of Cook County, Illinois for injunctive relief. Members of the community of Beverly-Morgan Park joined with Petitioners and donated time and

money to place pleas to Respondent to "Save Our Shrine" on billboards, bus stop benches and bumper stickers.

No Doctrinal Differences

Petitioners' and Respondent's dispute does not involve doctrinal differences. Petitioners are members of the Roman Catholic Church who continue to pray outside the locked doors of Sacred Heart Shrine every Sunday for Respondent.

Appellate Court Affirms

On August 17, 1979, the Appellate Court of Illinois affirmed the trial court's decision. (Appendix A)

Petition for Leave to Appeal by the Illinois Supreme Court was denied on November 29, 1979. (Appendix B)

Complaint Filed

On February 6, 1979, Petitioners filed a complaint which later was amended and prayed for, *inter alia* for:

1. A permanent injunction preventing the demolition of the church or a temporary injunction until landmark status is determined;
2. The imposition of a constructive trust for the benefit of Plaintiffs and Plaintiffs' successors such that the property herein and the improvements made thereon be restored, maintained and continue to function in accordance with its intended purpose as the Sacred Heart Shrine;
3. An accounting of any and all income and expenses which may be in his possession relative to the acquisition, maintenance, repair and operation of Sacred Heart Shrine;

4. That Plaintiffs be permitted to make necessary repairs and restoration to the premises and to employ the services of a qualified priest or pastor, subject to the approval of the Defendant, at their own expense in order to continue and maintain and perpetuate the operation of the Shrine of the Sacred Heart;
5. That the Plaintiffs be given notice, hearing and an opportunity to be heard with accompanying traditional procedural safeguards so as to provide the Plaintiffs with an opportunity to assert their equitable claims, interests or entitlements and that the court stay the proceedings until Plaintiffs have an opportunity to be heard by Defendant and his superiors.[3]

Complaint Dismissed

Respondent moved to dismiss the Amended Complaint on the grounds, *inter alia* that a civil court is barred from overruling a decision of an hierarchical church. On March 28, 1979, the trial court dismissed the Complaint without a trial and concluded that Petitioners had no right to notice, an accounting, or a trial. The trial court admonished Petitioners to be obedient.

> "What recourse then, if they are member of the church or the clerical organization of this Archdiocese, then what recourse would folks have? That's how simple it is, ladies and gentlemen. There is no big issue here. It's a big issue of obedience." (C.L. Record, March 28, 1979 at page 34.)

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[3] During oral argument before the Appellate Court, Petitioners waived the prayer to employ a qualified priest, subject to Respondent's approval and conceded that the placement of priests is an ecclesiastical question. In the Petition for leave to appeal before the Illinois Supreme Court, Petitioners formally waived the implied covenant prayer.

REASONS FOR GRANTING THE WRIT

I.

WHERE THERE ARE NO DOCTRINAL DIFFERENCES IT IS A DENIAL OF EQUAL PROTECTION AND DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO DENY MEMBERS OF HIERARCHICAL CHURCHES DUE PROCESS AND PROPERTY RIGHTS WHILE MEMBERS OF CONGREGATIONAL CHURCHES HAVE PROPERTY RIGHTS AND DUE PROCESS OF LAW.

The distinction between the property rights of congregational and hierarchical churches has its roots in the Reformation of England. In 1533, when the Pope refused to grant Henry VIII of England an annulment, Henry sequestered himself from Rome in order to divorce Catherine, his present wife, and marry Anne Boleyn.[4] The following year, Parliament passed the Act of Supremacy wherein the King was declared the supreme head on earth of the Church of England. A further Act of Parliament rendered it treason to deny royal supremacy.[5] By 1536, laws were passed which bestowed church property on the Crown.[6]

During the 17th Century a continuous power struggle evolved between the Church of England and other Protestant sects resulting in a civil war, after which a Presbyterian Constitution existed for a short time.[7]

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[4] W. Roper, *The Life of Sir Thomas More*, edited by R. S. Sylvester and D. P. Harding, 1975, p. 228.

[5] R. W. Chambers, *Thomas More*, 1973, pp. 300, 304, 319.

[6] F. Makower, *Constitutional History and Constitution of the Church of England*, orig. pub. 1895, p. 57.

[7] Makower, *supra* at p. 84.

After the Restoration, the church periodically attempted to assert its independence from the state, but as more clergy submitted themselves to King William III, the established church once again fell into complete subordination to the government.[8]

In the 18th and the beginning of the 19th centuries, the administration of the church was not much more than a branch of the general administration of the state. Thus, at the time of the decision in *Craigdallie v. Aikman*, 2 Bligh, 529, 1st Dow 1, (1813) Lord Eldon, a member of Parliament, was under allegiance to the King. To allow a member of an hierarchical church to bring a property dispute would open the door to suits by Anglican members against the head of the church, the King. Therefore, a distinction arose in England between congregational churches and hierarchical churches.

The United States Supreme Court erroneously adopted the Crown's distinction between property rights of the hierarchy and congregational churches, (even though a revolution was fought to free Americans from the English monarch), in *Watson v. Jones*, 80 U.S. (13 Wall) 679, 20 L. Ed. 666 (1871). To settle controversy over property rights in *Watson* between the Presbyterian General Assembly and several local Presbyterian churches, the Court stated that a distinction must be made between a "strictly congregational or independent form of church government" and one of a number of societies "united to form a more general body of churches, with ecclesiastical control in the general association over the members and societies of which it is composed".

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[8] Makower, p. 98.

In wrongfully distinguishing between congregational churches and hierarchical churches in the determination of property rights, the Illinois courts have denied members of hierarchical societies due process and equal protection of the laws. This results in invidious discrimination based on religion. The members of hierarchical religious societies are not allowed to protect their property rights under the law despite the fact that they contribute to the maintenance and support of the local church as do the members of congregational churches.

The Supreme Court has established that no individual can be punished for his/her religious beliefs. *Torcaso v. Watkins*, 367 U.S. 488, 81 S. Ct. 6 L. Ed. 2d 982 (1961). The Illinois courts, however, have punished the Petitioners because they belong to an hierarchical church by denying them civil recourse when a building in which they have property rights is to be destroyed without due process of law.

Petitioners were denied a trial even though the Supreme Court stated in *Boddie v. Connecticut*, 401 U.S. 371, 377, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971);

> ". . . (D)ue process requires, at a minimum, that absent a countervailing state interest of overriding significance, that persons forced to settle their claims to right and duty through the judicial process must be given a meaningful opportunity to be heard."

The Illinois courts did not recognize any overriding state interest and yet refused to grant the Petitioners an opportunity to be heard, knowing that the civil courts were the Petitioners' only resort since all the Petitioners' attempts to discuss the matter with the Respondent were unsuccessful. Thus, because of their religious beliefs, Petitioners were denied due process of law.

Any classification which serves to penalize a fundamental right, unless shown to be necessary to promote a compelling state interest, is unconstitutional. *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969). The Free Exercise Clause of the First Amendment protects the right of an individual to choose and practice the religious faith of his/her choice. Freedom of religion is clearly a fundamental right. The Illinois courts have penalized the Petitioners because they chose to belong to an hierarchical church. It is no less possible for a civil court to determine the property rights of hierarchical church members without deciding religious law than for it to determine the property rights of congregational church members. Therefore, the refusal to grant the Petitioners an opportunity to litigate their deprivation of property rights, is a denial of their constitutional guarantees of due process and equal protection under the law.

II.

RESPONDENT CANNOT DEPRIVE PETITIONERS OF THEIR PROPERTY RIGHTS USING THE FIRST AMENDMENT AS A SWORD BECAUSE PETITIONERS AND RESPONDENT HAVE NO DOCTRINAL DIFFERENCES.

Respondent couched its motions for dismissal in allegations of ecclesiastical concern and the Illinois Appellate Court determined that the appeal involved a "question of church polity over which civil courts have no jurisdiction". (Appendix A)

The demolition of a church, Petitioners respectfully aver, involves property rights, not polity.

No pastoral words of fatherly care were used in Respondent's announcement of the closing of Sacred Heart Shrine.

Respondent referred to his proposed destruction of Sacred Heart Shrine as a "merger",[9] a business term.

III.

NEUTRAL PRINCIPLES OF LAW SHOULD BE APPLIED IN THIS CONTROVERSY.

The decision to close Sacred Heart Shrine was arbitrary and the people were fraudulently informed in the summer of 1978 that the church would remain open and a pastor be appointed. They continued their monetary contributions to Respondent even though Respondent failed to use the money to repair their church.

If Petitioners would have been given the trial they asked for, they could have proven that:

1. The firm of Schmidt, Garden & Erickson, Architects and Engineers, found the Shrine to be structurally sound on January 30, 1979;
2. The repairs needed were estimated by Oscar F. Englund & Sons, Inc., General Contractors, to require the sum of $27,510.00;
3. Respondent is holding in excess of $30,000.00 in the Sacred Heart Shrine account at the Chancery Office, which would pay for the repairs;
4. The members of Sacred Heart Shrine are ready and willing to make or pay for any repairs or construction in excess of $30,000.00.

[9] Random House Dictionary of the English Language, Copyright 1970, 1969, 1967, 1966, by Random House, Inc. *Merger*, 1. a statutory combination of two or more corporations by the transfer of the properties to one surviving corporation. 2. any combination of two or more business enterprises into a single enterprise. 3. the act or an instance of merging.

The closing of Sacred Heart Shrine was done arbitrarily and with no concern for the people or the property they have lovingly maintained for seventy-five years. If the closing of the church was an ecclesiastical matter, surely the priests who were assigned there would have been consulted. They too were told a new pastor was forthcoming. This is within the penumbra of arbitrariness discussed by Justice Brandeis in *Gonzales v. Roman Catholic Archbishop of Manilla*, 50 S. Ct., 1929, necessitating civil court intervention.

IV.

THE COURTS HAVE THE POWER TO REVIEW AN ARBITRARY DECISION TO DEMOLISH A CHURCH.

The Illinois courts have held that Respondent's actions are not cognizable in civil courts. The Illinois courts denied Petitioners' contentions that Respondent's holding church property as a corporation sole, not in trust for anyone, not bound by the Religious Corporation Act of Illinois,[10] or the Enabling Act of the Special Legislature of 1945,[11] is unconstitutional. The Illinois courts saw no Constitutional infirmity in the Special Act of Legislation Respondent enjoys as a corporation sole.[12]

V.

THE ILLINOIS COURTS' GRANT OF IMMUNITY FROM ANY TRUST, STATUTORY OR IMPLIED, AND THE CORPORATION SOLE STATUS OF RESPONDENT VIOLATES THE FIRST AND FOURTEENTH AMENDMENTS.

Respondent was immunized from statutory and implied trust by the Illinois courts and granted corpora-

[10] Illinois Revised Statutes, Ch. 32, Sec. 164, *et seq.* 9.
[11] Private Laws of Illinois, 1845.
[12] Private Laws of Illinois, 1861.

tion sole status by legislative act, (Private Laws of Illinois 1861, 22d General Assembly, p. 78.)

Such immunity and status is, of itself, violative of the Establishment Clause of the First Amendment, United States Constitution, Amendments One and Fourteen, *Everson v. Board of Education*, 330 U.S. 1, 67 S. Ct. 504 (1947).

Petitioners were denied relief in the lower court because the court there allowed the corporation sole status of Respondent, (C.L. Record, March 29, 1979, p. 31):

> "It has been known for centuries that the Cardinal owns church property. Everything is in his name. The law has no right nor has there been any precedent, ladies and gentlemen. I've been a lawyer for forty years. There is no precedent going back into the olden days, so to speak, whereby a court has said to a cardinal or the head of a church, 'you cannot demolish this church'. Everything has been to the contrary. All the law, most of the law, has been diametrically opposed to the issue that you folks are promulgating with your hearts and souls. You could have volumes of books in your homes. I don't care where you put them because you need more than a library. All the cases that deal with religious matters give the head of the church the power to do that which he in his, shall we say, Catholic judgment—and you don't have to use the word Catholic, of course, solely in the sense of meaning religious—to be universal, he has the sole right and courts of law have none."

The First Amendment requires the state to be neutral in its relations with groups of religious believers whether their church be hierarchical or congregational. State power is no more to be used so as to handicap members of a religion, than it is to favor them. This

principle was firmly enunciated in *Everson v. Board of Education of Ewing Tp., et al.*, 67 S. Ct. 504 (1947) and *People of the State of Illinois v. Board of Education*, 333 U.S. 203, 210, 68 S. Ct. 461, 464 (1947):

> "Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another."

This ideal was one of the principles upon which our country was founded:

> "(I)t is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of (the) noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects?[13]

Respondent's immunity from the Religious Corporation Act[14] of Illinois is singular and an unconstitutional violation of the Establishment Clause of the First Amendment. No other religion has unfettered power. All other religions are required to hold the property in trust for the benefit of the congregation, corporation, church or society.

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[13] "Memorial and Remonstrance Against Religious Assessments", 183-191, *II Madison* cited in the dissent of *Everson v. Board of Education*, 330 U.S. at 65, 91 L. Ed. at 749.

[14] Illinois Revised Statutes, Ch. 32, Sec. 185.

Notwithstanding the enabling act[15] of the Illinois Legislature creating the corporation sole, the Illinois courts hold that Respondent is not bound by any statutory trusts.

The Illinois courts also ignored the implied trust placed in Respondent by the Petitioners' contributions for seventy-five years and the original land conveyance for $1.00.

In effect, Respondent has not only denied Petitioners their property to Sacred Heart Shrine, but, since Respondent is not bound by any civil laws of the State of Illinois, Respondent could knock down all churches, thereby denying Petitioners all First Amendment rights, *Morey v. Dowd*, 354 U.S. 457, 77 S. Ct. 1344, 1 L. Ed. 2d 1485. There is no rational basis for the dispossession of Petitioners.

To be consistent with equal protection, a classification must rest upon some difference that bears a reasonable relation to the act in respect to which the classification is proposed. *Gulf, Colorado & Santa Fe Railway v. Ellis*, 165 U.S. 150, 155 (1897).

The condition of being a Catholic does not justify deprivation of Constitutional rights. Here Petitioners have no rights, except to obedience, and Respondent can aim his demolition ball where he will with no accountability, for no law fetters his fancy.

[15] The enabling act of the Illinois Legislature of February 21, 1845 states:

> "Certain persons holding property in trust for the use of the Catholic Church and societies thereof in the State of Illinois to convey same . . . upon the trust *expressed or implied* (emphasis needed) to take, hold and receive the same for the use and benefit of any religious congregation of Roman Catholics . . .

John Locke has said, "Whenever law ends, tyranny begins"[16] Justice Rehnquist paraphrased the same philosophical concept in his dissent in *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 49 L. Ed. 2d 151, 96 S. Ct. 2372 (1976). The court stated at 427 U.S. 710 at page 171:

> "To make available the coercive powers of civil courts to rubber-stamp ecclesiastical decisions of hierarchical religious associations, when such deference is not accorded similar acts of secular voluntary associations, would in avoiding the Free Exercise problems petitioners envision itself create far more serious problems under the Establishment Clause."

VI.

A DECISION BY THIS COURT IS NECESSARY TO RESOLVE THE CONFLICTS BETWEEN THE ILLINOIS DECISION AND THE DECISIONS OF OTHER COURTS.

Illinois courts deny members of hierarchical church property rights. However, the Supreme Court of Kansas holds contrary and said so in *Gospel Tabernacle Body of Christ Church v. Peace Publishing Company*, Kan. 506 P. 2d 1135 (1973).

The Pennsylvania courts deny members of hierarchical churches property rights, *Canavaro v. Brothers of Order of Hermits of St. Augustine*, 326 Pa. 76, 191 A. 140 (1937).

Missouri does not adhere to the doctrine of blind obedience. In *State Ex. Rel. Hugh Behan and Bishop Michael F. McAuliffe v. The Honorable John C.*

[16] Locke, *Concerning Civil Government*, "Of Tyranny", reprinted in Vol. 35, Great Books of the Western World, University of Chicago, 1952.

Brockman, Judge of the Circuit Court of Osage County, Missouri, Division 1, the writ of prohibition sought by Bishop McAuliffe was denied by the Supreme Court of Missouri, Number 61256, March 13, 1979, and a trial is pending concerning the Holy Family Parishioners' property rights in preserving the altars in their church.

Michigan upholds the property rights of church members. In *Wiethoff v. St. Veronica School,* 210 N.W. 2d 108, Ill. (Mich. App. 1973), the court held that a beneficial interest in realty and personalty is a property right and the mere fact that the property happens to be a church building and its contents is of no significance.

VII.

NEUTRAL PRINCIPLES OF LAW SHOULD BE APPLICABLE.

In *Jones v. Wolf* (Docket No. 78-91, July 2, 1979) (47 U.S.L.W. 4962) the United States Supreme Court states:

> "We cannot agree, however, that the First Amendment requires the States to adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved."

Petitioners, likewise, cannot agree that they should be denied all property rights and due process guaranteed to them by the Fourteenth Amendment because they are the paying members of the Archdiocese of Chicago.

No one, not peasant or prince, choir boy or cardinal, has the right to place himself or herself above the laws of the land. The Supremacy Clause of the United States Constitution says it best:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.[17]

CONCLUSION

We respectfully pray, for the reasons stated above, that the petition should be granted,

Respectfully submitted,

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(The research and assistance of Dennis Michael Doherty, law student, IIT - Chicago-Kent College of Law, is gratefully acknowledged.)

[17] U. S. Constitution, Article VI, Sec. 2.

APPENDIX A

Opinion of the Appellate Court of Illinois
First District—August 17, 1979

No. 79-664

ANDREW GALICH, individually and on behalf of the SACRED HEART SAVE OUR SHRINE COMMITTEE,

Plaintiffs-Appellants,

v.

THE CATHOLIC BISHOP OF CHICAGO, a Corporation Sole,

Defendant-Appellee.

Appeal from the Circuit Court of Cook County.
Honorable Joseph M. Wosik, Presiding.

Mr. JUSTICE MEJDA delivered the opinion of the court:

Plaintiffs brought this suit to enjoin defendant from closing and demolishing a certain church to which defendant holds the record title. The trial court found that it lacked subject matter jurisdiction and granted defendant's motion to dismiss plaintiffs' amended complaint. This appeal followed. On appeal, plaintiffs contend that: (1) the trial court had jurisdiction over the instant case; (2) defendant holds the church property in trust; (3) an implied covenant requires the property to

be used for church purposes; and (4) demolition of the church should be stayed until its pending landmark status is resolved. We affirm. The pertinent facts follow.

This controversy centers around Sacred Heart Church which is located at 11652 S. Church Street in Chicago. A brief examination of the church's history as set forth in the record is necessary to understand the parties' interests and rights in the property.

Sacred Heart Church was established in 1904 as a national parish to serve the French-speaking community on Chicago's far south side. The "church" was situated in several locations in its early days. In 1905, a parcel of land was deeded to the Catholic Bishop of Chicago for a stated consideration of $1.00. Shortly thereafter, the Sacred Heart Church and Shrine was built on the site. In 1961, an additional piece of property, now part of Sacred Heart, was conveyed to defendant by Father John F. McNally. Both deeds conveyed the property in fee simple with no express restrictions, conditions, limitations or other covenants. Over the years residents of the surrounding community donated their time, money and personal property for the upkeep and beautification of the church.

Because of the church's past, on July 22, 1978, an application was made to the Commission on Chicago Historical and Architectural Landmarks to have the church designated an historical landmark. On March 22, 1979, the church was designated a potential landmark and is presently under consideration for landmark status.

Following the retirement of the last appointed pastor, members of the community were assured that another pastor would be appointed. On January 22, 1979, after discussion with the Board of Archdiocesan Consultators,

defendant announced the merger of Sacred Heart Church with other nearby parishes. The reasons given for the merger were the hazardous condition of the building and its need of costly repairs, and a shortage of priests to properly staff the facility.

A group of Roman Catholics who regularly attended and worshipped at Sacred Heart Church formed the plaintiff committee and unsuccessfully sought to discuss the matter with defendant. Unable to contact defendant, plaintiffs brought this action for equitable relief.

In the amended complaint, plaintiffs alleged that an implied covenant exists on the property requiring its continued use for religious purposes. Plaintiffs prayed for: (1) a permanent injunction preventing the demolition of the church or a temporary injunction until the church's landmark status is determined; (2) the imposition of a constructive trust over the church property for the benefit of plaintiffs so that it can be maintained as a church; (3) an accounting by defendant of all income from the church; (4) an order permitting plaintiffs to make necessary repairs and employ a priest subject to defendant's approval and at plaintiffs' expense in order to perpetuate the church; and (5) an order staying these proceedings until plaintiffs can be given notice and a full hearing by defendant.

Defendant moved to dismiss the amended complaint on the ground, among others, that a civil court is barred from overruling a decision of a hierarchical church. The trial court concluded that it had "no right to interfere in religious matters" and dismissed the amended complaint. Plaintiffs then brought this appeal. Defendant has agreed not to demolish the church until this court could decide this appeal.

OPINION

The threshold question for this court's determination is whether the First Amendment as applied to the states through the Fourteenth Amendment precludes examination of the merits of plaintiffs' claim. In *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976), 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151, the Supreme Court made it clear that the role of a civil court in religious property disputes is severely restricted since the First Amendment "commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. [Citation.] This principle applies with equal force to church disputes over church polity and church administration." (426 U.S. 696 at 710, 96 S. Ct. 2372 at 2381, 49 L. Ed. 2d 151 at 163.) The Supreme Court recently reaffirmed this position in *Jones v. Wolf* (Docket No. 78-91, July 2, 1979) (47 U.S.L.W. 4962). The Supreme Court stated that although courts are prohibited from resolving church property disputes on the basis of religious doctrine and practice, neutral principles of law could be used to determine the respective parties' rights. The majority expressed its view that by relying "exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges" (47 U.S.L.W. at 4964) the neutral principles approach "promises to free civil courts completely from entanglement in questions of religious doctrine polity, and practice." 47 U.S.L.W. at 4964.

Plaintiffs characterize the instant case as involving a question of their property rights in the church building. They contend that the dispute could be resolved by neutral principles of law and would not involve interpretation of religious doctrine or ecclesiastical issues. Defendant, on the other hand, asserts that the dispute is

of a religious nature and not merely a property matter. The determination of the true nature of this action will decide whether this court can address the merits of the appeal.

I.

Plaintiffs first contend that defendant holds the property in trust for the benefit of plaintiffs, based on the theories of an implied trust and a trust created by virtue of defendant's status as a corporation sole and the application of the Religious Corporations Act. (Ill. Rev. Stat. 1977, ch. 32, pars. 164 through 188.) Although the pleadings raised the issue of an implied trust, plaintiffs have not pursued this theory on appeal. Consequently, we will limit our consideration only to whether defendant stands as a trustee under the applicable statutes.

In maintaining that the Religious Corporations Act (hereinafter "the Act") governs the instant case, plaintiffs rely specifically on sections 42 and 46j of the Act (Ill. Rev. Stat. 1977, ch. 32, pars. 171 and 185), which refer to corporations formed under the Act or under "any law of this state." While defendant has never incorporated under the voluntary provisions of the Act (Ill. Rev. Stat. 1977, pars. 164 and 173), plaintiffs urge that because defendant became a corporation sole pursuant to an act of the legislature (Private Laws of Illinois 1861, 22d General Assembly, p. 78), he is governed by the Act. We do not agree.

The Act makes it possible for a group organized for the purpose of religious worship to incorporate, thus taking on a legal identity and allowing it to hold title to property, a fact accomplished, with regard to defendant, by the enactment of 1861. The Act also places certain restrictions on religious corporations by defining and

limiting the powers of the trustees and the corporations themselves. The 1861 act contains no provision for the creation of a board of trustees and vests title to all property in the corporation sole created by the act. The 1861 law further protects the Catholic Bishop of Chicago against the divestiture of any right to property acquired under the act. These differences between the two statutes clearly show that the 1861 law is an act of special legislation which prevails over the general provisions of the Religious Corporations Act. (See, *e.g.*, *People ex rel. Atwell Printing & Binding Co. v. Board of Com'rs* (1931), 345 Ill. 172, 177 N.E. 705.). Accordingly, we conclude that no statutory trust has been created in the instant case.

Plaintiffs contend, nonetheless, that the 1861 act is violative of the Illinois Constitution of 1870 which prohibits special legislation. (Ill. Const. 1870, art. IV, § 22.) However, the 1870 Constitution invalidated only special charter corporations which were not organized when the constitution was adopted or within a ten-day grace period thereafter. (Ill. Const. 1870, art. XI, § 2.) The Catholic Bishop of Chicago became a corporation sole in 1861 and the Illinois Supreme Court has held that such a special charter corporation, organized before the 1870 Constitution, is not invalidated by the constitution's provisions. (*Rosehill Cemetery Co. v. City of Chicago* (1933), 352 Ill. 11, 185 N.E. 170.) Moreover, defendant's status as a corporation sole was also preserved by the enactment of the 1970 Constitution. Ill. Const. 1970, art. XIII, § 6.

Plaintiffs also question in passing whether any rational basis for the special statutory classification exists. This question was long ago resolved in the case of *Johnson v. Joliet and Chicago R.R. Co.* (1859), 23 Ill. 202

at 207, where, when faced with a challenge to a special statute on the grounds that the same purpose could be accomplished under general laws, the court stated:

> "It is too late now to make this objection, since, by the action of the General Assembly under this clause, special acts have been so long the order of the day, and the ruling passion with every legislature which has convened under the constitution, until their acts of this description fill a huge and misshapen volume, and important and valuable rights claimed under them. The clause has been wholly disregarded, and it would now produce far-spread ruin, to declare such acts unconstitutional and void. It is now safer, and more just to all parties, to declare, that it must be understood that in the opinion of the General Assembly, at the time of passing the special act, its objects could not be attained under the general law, and this, without any recital by way of preamble, as in the act to incorporate the Central Railroad Company. That preamble was placed there by the writer of this opinion, and a strict compliance with this clause of the constitution would have rendered it necessary in every subsequent act. But the legislature, in their wisdom, have thought differently, and have acted differently, until now our special legislation and its mischiefs are beyond recovery or remedy."

Plaintiffs' argument that defendant's status as a corporation sole violates the establishment and equal protection clauses of the United States Constitution (U.S. Const., amendments I and XIV) is without merit. Contrary to plaintiffs' contention that the 1861 act treats defendant differently from other persons similarly situated, the 1861 act, as well as legislation enacted contemporaneously, acknowledges the differences between certain organized religions and attempts to provide a means through which such religions can conduct business matters. (See Private Laws of Illinois

1861, pp. 77 through 89.) Such legislation does not aid one religion at the expense of another.

We therefore conclude that defendant is not a trustee for the benefit of plaintiffs, and any property rights which plaintiffs may have must be based on other grounds.

II.

Plaintiffs next contend that defendant holds the Sacred Heart property subject to an implied covenant. They argue that since the land was originally conveyed for use as a church and had been so maintained for a long period, an implied covenant arises for its continued use as a church. They rely on *Hale v. Finch* (1881), 104 U.S. 261, 26 L. Ed. 732, for the principle that express words are not necessary to charge a party with a covenant. However, the court in *Hale* also stated: "a covenant will not arise unless it can be collected from the whole instrument that there was an agreement, or promise, or engagement, upon the part of the person sought to be charged, for the performance or non-performance of some act." 104 U.S. 261, 269, 26 L. Ed. 732, 735.

The court found an express condition in *Hale* but refused to hold that this was an implied covenant. Generally, a covenant in a contract will only be implied when a court can clearly see that it was the intention of the parties, or when the covenant is necessarily implied to effectuate the purpose of the contract. (*Jobbins v. Gray* (1889), 34 Ill. App. 208.) Preliminary negotiations and agreements made prior to a conveyance of property merge into the conveyance itself. (*Department of Transportation v. Western National Bank of Cicero* (1976), 63 Ill. 2d 179, 347 N.E.2d 161.) Where real property is

conveyed in fee, courts will not enforce a restriction on its use by the grantee unless the intent to create such a limitation is clear. (*Patton v. Vining* (1958), 14 Ill. 2d 11, 150 N.E.2d 606.) The deeds which conveyed the land to defendant are absolute on their face and contain no express covenants regarding the use of the property. There is no indication of what the agreement or intent of the parties may have been. It is difficult to speculate that the deeds were given and accepted by the parties with the understanding that the land would always be used for church purposes. Changes in circumstances and needs over time must have been contemplated. If a covenant for continued use as a church were to be implied, defendant would be forced to maintain the building as a church until the parishioners agreed to a closing. Absent any indication of an intent to create such a limitation, this court will not imply such a covenant. We therefore find that defendant holds the Sacred Heart property free from a covenant requiring continued church use of the property.

III.

Plaintiffs next contend that the trial court should have issued a temporary restraining order to prevent the demolition of the church pending the determination of its possible landmark status. (Ill. Rev. Stat. 1977, ch. 24, pars. 11-48.2-1 through 11-48.2-7; Municipal Code of Chicago, ch. 21, pars. 62 through 64.2.) Defendant argues that plaintiffs may not enjoin him from destroying the building because of its possible landmark status since neither the City of Chicago nor the Landmark Commission has that authority.

People ex rel. Marbro Corp. v. Ramsey (1960), 28 Ill. App. 2d 252, 171 N.E.2d 246, presents an analogous

situation. There, a wrecking company had contracted with the owner of the Garrick Theatre Building for the demolition of the building. The wrecking company properly completed an application for a permit to wreck the building and submitted it for approval. Because the building had been previously designated a landmark, the City of Chicago sought to delay the issuance of the permit until steps could be taken to preserve the building. The wrecking company petitioned for a writ of mandamus to compel the issuance of the permit. The trial court denied the petition. The appellate court reversed and directed that judgment be entered for the wrecking company. Concerning the City's efforts, the court said:

> "It is laudable to attempt to preserve a landmark; however, it becomes unconscionable when an unwilling private party is required to bear the expense. The owners had decided that the preservation of the building was no longer feasible. All their previous efforts to retain the economic usefulness of the building had failed. It is undisputed that the theatre is functionally obsolete and that the building would continue to operate under a deficit even if large expenditures for renovation were made. The building is presently vacant and is a potential fire hazard. In the exercise of their business judgment and their clear legal right, the owners applied for a permit to demolish the structure." 28 Ill. App. 2d 252, at 256.

The result in the *Ramsey* case has since been enacted into legislation in section 11-48.2-5 of the Illinois Municipal Code. (Ill. Rev. Stat. 1977, ch. 24, par. 11-48.2-5.) That section of the Act provides in pertinent part:

> ". . . The denial of an application for a building demolition permit by reason of the operation of this Division, . . . or the imposition of any regulation

> solely by reason of the provisions of this Division which requires, . . . any unusual or extraordinary provisions for upkeep and maintenance of any building, shall be deemed to constitute a taking or damage for a public use of such property for which just compensation shall be ascertained and paid."

In this case, defendant has determined that because of the hazardous condition of the building and the shortage of priests it was necessary to close the church and merge it with nearby parishes. To restrain defendant from exercising his legal rights concerning the building would amount to a taking or damage for a public use of his property for which he should be compensated. Even if the City were to acquire the property in order to preserve it as a landmark, plaintiffs' purpose would be unfulfilled. In their memorandum in response to defendant's motion to dismiss the amended complaint, plaintiffs admitted that, "Plaintiff's only interest lies in keeping Sacred Heart Shrine alive." Should the City acquire the site, it could no longer be used as a Catholic Church.

Since the demolition of the church should not be enjoined and plaintiffs' purpose could not be accomplished if the land is taken, the potential landmark designation should not prevent defendant from demolishing the building.

Concerning plaintiff's property rights generally, the case of *Canovaro v. Brothers of Order of Hermits of St. Augustine* (1937), 326 Pa. 76, 191 A. 140, is instructive. There, the Supreme Court of Pennsylvania, upon nearly identical facts, decided:

> "Under the church law the effect of dismemberment was to cause the parish to cease to exist and to transfer its members to adjoining parishes. There were no longer any members of the original parish.

The order of dismemberment was binding on the parish members. Division, dismemberment, or suppression of parishes, and the effect thereof on membership are purely ecclesiastical matters, dependent upon the church law as administered by the appropriate authorities and tribunals. [Citation.] The effect of the dismemberment of the parish and the transfer of appellants' membership therefrom to other parishes was to deprive them of all rights as members in the church property of the parish from which they were transferred. Church membership is an ecclesiastical matter, not temporal. There is no property right in membership, and there could be no property rights in lay members except through their membership in the congregation." (191 A. 140 at 145.)

IV.

Since plaintiffs have no protectible property rights in the church building, the controversy centers around an ecclesiastical decision. In an affidavit attached to defendant's motion to dismiss, it is alleged that the Roman Catholic Church is hierarchical in nature, that the Archdiocese of Chicago shares the identical faith and doctrine with other Catholic churches throughout the world, and that all these churches look to the Pope in Rome as their ultimate earthly authority. In an unverified reply to the motion to dismiss, plaintiffs denied that defendant is a hierarchical church since the Second Vatican Council placed co-responsibility on the laity for church matters. Since the well-alleged facts contained in defendant's affidavit are not contradicted by counter affidavit, they must be taken as true notwithstanding the existence of the contrary averments in the plaintiffs' reply pleading. (*Central Clearing, Inc. v. Omega Industries, Inc.* (1976), 42 Ill. App. 3d 1025, 356 N.E.2d 852; *Fooden v. Board of Governors* (1971), 48 Ill.

2d 580, 272 N.E.2d 497, *cert. denied* (1972), 408 U.S. 943; *Millsaps v. Bankers Life Co.* (1976), 35 Ill. App. 3d 735, 342 N.E.2d 329.) An hierarchical church is one which is "organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head." (*Kedroff v. St. Nicholas Cathedral* (1952), 344 U.S. 94, at 110, 73 S. Ct. 143 at 151, 97 L. Ed. 120 at 133.) Accordingly, for the purpose of the motion to dismiss, we conclude from the facts contained in defendant's affidavit that the Catholic Church is hierarchical in nature.

In sum, the action challenged by plaintiffs is defendant's decision not to assign another pastor to Sacred Heart and to instead provide services at other nearby parishes for those who had previously worshipped at Sacred Heart. Among the relevant factors considered in reaching this decision would be the cost of repairs, the utility of the building, and the availability of priests. These are questions of the allocation of resources and manpower to best serve the needs of the Catholic Community of the Archdiocese of Chicago. They are matters of church government and as such are ecclesiastical in nature. The fact that property is incidentally involved because it was needed to provide a place to worship does not change the basic nature of the action. The mere assertion of a property right is not sufficient to invest a civil court with jurisdiction over what is essentially a religious dispute. (*Eddy ex rel. Pfeifer v. Christian Science Board* (1978), 62 Ill. App. 3d 918, 379 N.E.2d 653.) It is a decision within the exclusive province of the Catholic Bishop of Chicago, subject only to the decision of the Pope, his superior. "Indeed, it is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective

criteria." *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976), 426 U.S. 696, 714, 96 S. Ct. 2372, 2383, 49 L. Ed. 2d 151, 166.

The prayers for relief in the instant case clearly demonstrate the religious character of the dispute. Plaintiffs sought to have a civil court impose a constructive trust to continue to maintain Sacred Heart as a church, to order that plaintiffs be able to employ their own priest, and to require defendant to give them adequate notice and a hearing on the dispute. They seem to have this court fashion some civil remedy and to place procedural strictures on defendant's decision making. In order to grant the requested relief, this court would be substituting its decision on the spiritual needs of the area for that of the bishop, and ordering him to maintain the church. In addition, the bishop is not required to provide adequate notice or a hearing before reaching a decision on a religious matter. As was noted in the *Serbian Eastern Orthodox* case, "Constitutional concepts of due process, involving secular notions of 'fundamental fairness' or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance." (426 U.S. 696, 715, 96 S. Ct. 2372, 2382, 49 L. Ed. 2d 151, 166.) The decision of defendant to close Sacred Heart Church is precisely the type of situation addressed in the *Serbian Eastern Orthodox* case as follows:

> " 'To permit civil courts to probe deeply enough into the allocation of power within a [hierarchical] church as to decide . . . religious law [governing church polity] . . . would violate the First Amendment in much the same manner as civil determination of religious doctrine.' *Md. & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 369, 24 L. Ed. 2d 582, 90 S. Ct. 499 (1970), (Brennan, J., concurring.) For where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them. Ibid." 426 U.S. 696, at 709, 96 S. Ct. 2372, 2380, 49 L. Ed. 2d 151, 162.

Contrary to plaintiffs' contentions, we have determined that the instant appeal involves a question of church polity over which civil courts have no jurisdiction. The trial court's order dismissing plaintiff's amended complaint is therefore affirmed.

AFFIRMED.

SULLIVAN, P.J., and WILSON, J., concur.

APPENDIX B

UNITED STATES OF AMERICA

State of Illinois)
) ss.
Supreme Court)

At A Term Of The Supreme Court, begun and held in Springfield, on Monday, the twelfth day of November in the year of our Lord, one thousand nine hundred and seventy-nine, within and for the State of Illinois.

PRESENT: JOSEPH H. GOLDENHERSH, CHIEF JUSTICE
JUSTICE ROBERT C. UNDERWOOD JUSTICE DANIEL P. WARD
JUSTICE HOWARD C. RYAN JUSTICE WILLIAM G. CLARK
JUSTICE THOMAS J. MORAN JUSTICE THOMAS E. KLUCZYNSKI
WILLIAM J. SCOTT, ATTORNEY GENERAL
LOUIE F. DEAN, MARSHAL
ATTEST: CLELL L. WOODS, CLERK

Be It Remembered, that, to-wit: on the 29th day of November 1979, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Andrew Galich, individually and on behalf of the Sacred Heart Save Our Shrine Committee,

Petitioner,

No. 52570 *v.*

The Catholic Bishop Of Chicago, A Corporation Sole,

Respondent.

Petition for Leave to Appeal from
Appellate Court First District, No. 79-664

And now on this day the Court having duly considered the Petition for Leave to Appeal herein and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondent recover of and from the said Petitioner costs by it in this behalf expended, to be taxed, and that it have execution therefor.

I, CLELL L. WOODS, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this day of , 19

Clerk,
Supreme Court of the State of Illinois.

79-1077

Supreme Court, U. S.
FILED
FEB 8 1980
JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 52570

ANDREW GALICH, individually, and on behalf of the SACRED HEART SAVE OUR SHRINE COMMITTEE, INC.,

Petitioners,

vs.

THE CATHOLIC BISHOP OF CHICAGO, a corporation sole,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 52570

ANDREW GALICH, individually, and on behalf of the SACRED HEART SAVE OUR SHRINE COMMITTEE, INC.,

Petitioners,

vs.

THE CATHOLIC BISHOP OF CHICAGO, a corporation sole,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

Respondent, The Catholic Bishop of Chicago, respectfully requests that this Court deny the Petition For Certiorari, seeking review of the Illinois Appellate Court, First District's opinion in this case. That opinion is reported at 394 N.E.2d 572 and reproduced in the appendix to petitioners' Petition For Certiorari at 1(a).

QUESTION PRESENTED

Whether petitioners, who have no property right in a church building under Illinois law, can overrule the decision of a Bishop of a hierarchical religious denomination and the fee simple owner of the property to close the building.

STATEMENT

Closing a church is not easy. Years of memories and the fellowship of Christian worship stir strong emotions in parishioners for their church. But from time to time, the Catholic Bishop of Chicago, just as any other bishop or religious leader, must confront the difficult and distasteful decision to close a church. Unfortunately, Sacred Heart Church is not the first and will not be the last. But the Bishop must provide the maximum pastoral care to the most Catholics in the Archdiocese of Chicago. This task is becoming even more difficult as fewer Catholics become priests, resources shrink, and double-digit inflation rages.

Before the trial court, the Illinois Appellate Court and the Illinois Supreme Court, petitioners raised a flurry of arguments to overrule the Bishop's decision to close Sacred Heart. But petitioners cannot escape the fact that their amended complaint seeks a civil court order commanding the Catholic Bishop of Chicago to maintain Sacred Heart Church as a church and to appoint a "qualified priest or pastor" for that purpose. (*See* Prayers for Relief, C at 12, 14-16) As the Illinois

Appellate Court so rightly put it, petitioners are asking a civil court to substitute "... its decision on the spiritual needs of the area for that of the bishop, and [to order] him to maintain the church." (Cert. Pet. Ap. at 14) We regret that their disagreement with the Catholic Bishop has progressed to this high Court.

REASONS FOR DENYING THE WRIT

I.

THE DECISIONS BELOW ARE FULLY IN ACCORD WITH THE DECISIONS OF THIS COURT.

A. This Court fully treated the appropriate First Amendment standards for resolving church-property disputes only last Term in *Jones v. Wolf*, 99 S. Ct. 3020 (1979). *Wolf* held that states "may adopt *any* one of various approaches for settling church-property disputes" consistent with the First Amendment. 99 S. Ct. at 3025. Traditionally, Illinois Courts have looked to the polity analysis of *Watson v. Jones*, 13 Wall. 679 (1871) and *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976) to decide church-property disputes. In this case, the Illinois Courts applied the *Watson* polity analysis as well as the neutral principles of law analysis more recently explicitly endorsed by this Court in *Wolf*. Under either standard, the decisions below are correct.

1. *Wolf's Neutral Principles Analysis*. The Catholic Bishop of Chicago owns Sacred Heart Church in fee simple absolute. The Catholic Bishop's warranty deed reflects this, and petitioners have never disputed this fact. The Illinois Court quite rightly and expressly held that on the facts of this case petitioners have no property right, express or implied, to the church under Illinois

state law. (Cert. Pet. Ap. at 12a) Petitioners' Petition For Certiorari is tellingly silent on this point. Absent a property right in petitioners, the Catholic Bishop has an unfettered right to manage the property under Illinois law. *Funk v. Library Board of Reddick's Library*, 44 Ill. App. 3d 180, 357 N.E.2d 853 (3d Dist. 1976). Thus, "objective, well-established concepts of trust and property law familiar to lawyers and judges" require dismissal of petitioners' case. *Jones v. Wolf*, 99 S. Ct. at 3025.

2. *Watson's Polity Analysis.* The Roman Catholic Church is a hierarchical religious denomination, *Gonzales v. Roman Catholic Archbishop of Manilla*, 280 U.S. 1 (1929), and decisions respecting its internal governance are not reviewable in civil courts, *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721-22 (1976) (holding ". . . that the reorganization of the Diocese [a hierarchical church in that case] involves matters of internal church government, an issue at the core of ecclesiastical affairs . . . ."). The Catholic Bishop, the fee owner of Sacred Heart, holds the ultimate authority and responsibility for the allocation of pastoral resources in the Archdiocese of Chicago under church law, and the First Amendment prohibits civil courts from interfering with his decision to close Sacred Heart.

B. Moreover, petitioners' Petition For Leave To Appeal in the Illinois Supreme Court waived "any and all prayers for relief as to the assigning of a priest and the maintenance of Sacred Heart as a church." (Cert. Pet. at 11 n.3) This waiver concedes petitioners' entire case. Any reading of petitioners' amended complaint and their papers in this Court makes clear that the warp and woof of this action is their plea to operate Sacred Heart as a church. Petitioners admitted as much in the trial court in Chicago when they asserted that "Plaintiffs' only interest lies in keeping Sacred Heart Shrine alive." (Memorandum in Response to Motion to Dismiss, C at 101) They could not change their theory on appeal in the Illinois courts, and they certainly cannot change their theory in this Court.

Petitioners' sweeping waiver does not cure the constitutional infirmity of their amended complaint in any event. If any of petitioners' prayers for relief remain, those prayers, in substance, either demand that petitioners be given the church property for their own religious purposes or that the State be given the property as a landmark property of some sort. If a civil court would ever order such relief, it would either be ordering—indeed sanctioning—a schism in the Roman Catholic Church or be taking the Bishop's property without due process and just compensation. Neither result is any more constitutional than petitioners' demand that the Bishop appoint a priest to serve them. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); *Canovaro v. Brothers of Order of Hermits of St. Augustine*, 326 Pa. 76, 191 A. 140 (1937); *Lutheran Church in America v. City of New York*, 35 N.Y.2d 121, 316 N.E.2d 305 (1974).

Accordingly, this case, which is before the Court on the barebones allegations of a complaint, presents no reason or record to rehash and restate constitutional principles that were canvassed in *Wolf* just nine months ago. As all three state courts found, the First Amendment bars the Illinois courts from asserting jurisdiction and hearing this case.

II.

INDEPENDENT AND ADEQUATE STATE GROUNDS SUPPORT THE ILLINOIS DECISION AND THERE IS NO JURISDICTION FOR THIS COURT'S REVIEW.

This Court will not review state court judgments that are supported by state law independent of the federal constitutional questions presented. *Murdoch v. Memphis*, 20 Wall. 590, 636 (1874). As this Court has long held:

> "The reason [for this rule] is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and Federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of Federal laws, our review could amount to nothing more than an advisory opinion." *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945).

Petitioners must establish that they have a property right in Sacred Heart Church to even state a cause of action for extraordinary injunctive relief under Illinois law. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972) (property interests are creatures of state law). Throughout this litigation, petitioners have claimed property rights in the church under 1) the Illinois Religious Corporations Act, *Ill. Rev. Stat.* ch. 32, §§ 164 *et seq.*, 2) the landmark ordinances of the City of Chicago, *Municipal Code* ch. 21, §§ 21-62 *et seq.* and statutes of Illinois, *Ill. Rev. Stat.* ch. 24, §§ 11-48.2-1 *et seq.*, and 3) the Illinois common law of implied covenants and trusts. (The implied covenant claim was waived in

the Illinois Supreme Court. (Cert. Pet. at 11 n.3)) The Illinois Court carefully examined each of these state law claims and decided them against petitioners, concluding that they "have no protectible property rights in the church building." (Cert. Pet. Ap. at 12a)

This Court has no jurisdiction to review these determinations of state law. Because they are wholly independent of any federal questions and are in any case dispositive, this Court has no jurisdiction to review the judgment of the Illinois Court even if its resolution of the federal constitutional questions were in error. *E.g.*, *Wilson v. Loew's Inc.*, 355 U.S. 597 (1958) (dismissing certiorari as improvidently granted).

CONCLUSION

For all of the foregoing reasons, we respectfully submit that the Petition For A Writ Of Certiorari should be denied.

Respectfully submitted,

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